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REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

Written statement submitted by Human Rights Advocates, a non-governmental organization in consultative status (Category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[22 August 1994]

Preliminary report on opposition to the impunity of perpetrators of human rights violations (economic, social and cultural rights), prepared by Mr. Guissé and Mr. Joinet, pursuant to Sub-Commission resolution 1993/37

1. Human Rights Advocates (HRA) wishes to commend the Sub-Commission and Messrs. Joinet and Guissé for undertaking a study of the mechanisms of impunity, and possible measures to combat the phenomenon. HRA looks forward to the Rapporteurs' final report, which we hope will include concrete recommendations on combating impunity for civil and political rights, as well as for economic, social and cultural rights. In particular, we hope the final report will clearly establish that States have international obligations to investigate, prosecute and provide redress for certain grave violations of human rights, and that domestic laws cannot override those obligations. Given the continuing seriousness and urgency of the problem of impunity worldwide, measures to combat impunity are a key to increasing compliance with existing instruments and laws protecting the full range of human rights.

2. Impunity for violations of economic, social and cultural rights is indeed a vast topic, and one where much remains to be done. HRA believes the present study should focus attention on possible mechanisms to combat impunity for such violations. Three categories of violations are relevant: those carried out directly by State officials, those carried out by private parties with the approval or acquiescence of the State, and those engineered or facilitated by international economic and financial institutions. Among the latter, it is important to distinguish violations which arise from project funds and those that arise due to policies of structural adjustment, conditionality and deregulated trade.

3. State officials and their friends can violate economic, social and cultural rights through corruption. In addition to a multilateral mutual assistance treaty, the study should consider measures to require increased transparency in the allocation of funds from international financial institutions, as well as an investigatory body to trace the use of international funds.

4. Economic, social and cultural rights may also be violated by State policies which have the effect, if not the intent, of depriving a group of its subsistence. Again, both State officials and multilateral aid and trade institutions may be complicit in such policies. HRA referred to some of these violations in an intervention before the Commission on Human Rights on the right to development (E/CN.4/1994/NGO/50). For example, large-scale dams, commercial export farming projects and the like have deprived thousands of rural families of their livelihood. The granting of logging concessions to State officials and their friends and relatives had deprived many of the forest peoples of Malaysia, Indonesia, Russia (Siberia) and other countries of their subsistence. These logging concessions enrich a small minority, but provide the export earnings necessary to comply with the mandates of international financial institutions.

5. Where the actual or probable effects of such policies are clear and yet such policies continue, an intent to violate human rights should be presumed and the officials in charge of the policies should be subject to sanction. Such sanctions need not, however, be criminal in nature: loss of position, rank, pension, or restitution to the victims of the policies should all be explored as possibilities. In certain egregious cases, violations of economic, social and cultural rights will overlap with violations of the right to life. In those cases, criminal sanctions may be appropriate as well. In this sense, the two portions of the current study should be linked.

6. Misguided and harmful "development" policies are facilitated, abetted and sometimes initiated by international financial institutions. In addition, multilateral trade institutions like the newly-formed World Trade Organization employ legal rules which allow third parties to challenge and overturn government policies to restrict exports or protect the livelihood of local communities. Thus, for example, communities dependent on small-scale agriculture are destroyed by an influx of cheap imports in the name of "free trade". Thousands are left without land, without work, without a livelihood and with an impoverished culture in the name of facilitating the commercial expansion of large corporations based in the wealthiest countries. If the study is to look at the desirability of incorporating human rights criteria

into the work of the World Bank and the International Monetary Fund, it must also consider the incorporation of similar criteria into the rules, and the work, of the World Trade Organization.

7. The incorporation of human rights criteria into the work of international financial and trade institutions is an important and long-overdue goal. The study should investigate how human rights doctrine governs the activities of these institutions in their capacity as intergovernmental organizations composed of States. As such, these institutions have an obligation not to undertake activities that contribute to human rights violations. The study should also consider mechanisms for those whose human rights have been violated by the policies or projects of these institutions to obtain restitution. A complaints procedure under the Covenant on Economic, Social and Cultural Rights is one possibility, but not the only one. Expansion of the current World Bank inspection panel, for instance, might be considered. In any procedure developed, adequate access for NGOs must be a central tenet.